

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jesse Lee Keel, III

v.

PECO Energy Company

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:

C-2019-3012762

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

The Complaint is dismissed for the failure of the Complainant to appear for the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On September 3, 2019, Jesse Lee Keel, III (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company). In the Complaint, Mr. Keel alleges that he would like PECO to stop billing him for services provided after he moved out of his former address on Roosevelt Blvd., Philadelphia, Pennsylvania (service address).

On September 30, 2019, Respondent filed its Answer (Answer), denying the material averments of the Complaint. PECO also stated that the charges contested by the Complainant are the unpaid balance for services to the Complainant while he lived at the service address.

On October 3, 2019, a Hearing Notice was mailed to all parties, setting an Initial Call-In Telephonic Hearing for December 18, 2019 at 10:00 a.m.

A Prehearing Order dated October 3, 2019, for a telephonic hearing on December 18, 2019, was mailed to all parties, setting forth the procedures for a telephonic hearing and reminding the parties of the hearing date and time.

On December 10, 2019, PECO filed a Motion to Continue the hearing. On December 12, 2019, an Order was issued, granting the PECO Motion for Continuance.

By Call-In Telephonic Hearing Notice dated December 12, 2019, the hearing was rescheduled to be held on February 4, 2020.

On January 29, 2020, a Prehearing Order for a telephonic hearing on February 4, 2020, was issued to all parties, again setting forth the procedures for a telephonic hearing and reminding the parties of the hearing date and time.

The hearing convened by telephone on February 4, 2020 at 10:00 a.m. The Complainant did not appear for the hearing. PECO appeared and was represented by Edward T. Fisher, Esquire. Also present was PECO witness Anna Mae Migliaccio.

A break was taken to allow the Complainant additional time to appear. The hearing resumed at 10:19 a.m. The Complainant was not present.

The Company moved (Motion) that the matter be dismissed for failure of the Complainant to appear and prosecute his Complaint. The Motion was taken under advisement.

The record closed on March 16, 2020, upon receipt of the transcript. PECO's Motion to Dismiss for Failure to Prosecute is ready for a decision.

## FINDINGS OF FACT

1. The Complainant is Jesse Lee Keel, III, who was a customer of PECO Energy Company on Roosevelt Blvd. in Philadelphia, Pennsylvania.
2. The Respondent is PECO Energy Company.
3. On September 3, 2019, the Complainant filed a formal complaint against PECO.
4. The Respondent filed an Answer on September 30, 2019.
5. On October 3, 2019, a Call-In Telephonic Hearing Notice was mailed to all parties, setting the hearing for December 18, 2019 at 10:00 a.m.
6. The October 3, 2019 Call-In Telephonic Hearing Notice contained a dial-in number and code to be entered by the parties to participate in the hearing.
7. A Prehearing Order for the December 18, 2019 telephonic hearing was mailed to all parties on October 3, 2019.
8. The October 3, 2019 Prehearing Order included the dial-in number and code to be entered by the parties to participate in the hearing.
9. PECO filed a Motion to Continue the December 18, 2019 hearing on December 10, 2019.
10. By Hearing Notice dated December 12, 2019, and mailed to all parties, a telephonic hearing was set for February 4, 2020.

11. The December 12, 2019 Hearing Notice provided a dial-in number and code to be entered by the parties to participate in the February 4, 2020 hearing.

12. A Prehearing Order for the February 4, 2020 telephonic hearing was mailed to all parties on January 29, 2020.

13. The January 29, 2020 Prehearing Order also contained the dial-in number and code to be entered by the parties to participate in the hearing.

14. Both Hearing Notices mailed to the Complainant stated:

At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed.

and

*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*

*(emphasis in original)*

15. The hearing began as scheduled on February 4, 2020 at 10:00 a.m.

16. On the day of the hearing, PECO was present and represented by counsel.

17. The Complainant was not present when the hearing began on February 4, 2020 at 10:00 a.m.

18. A recess was taken during the February 4, 2020 telephonic hearing and the undersigned confirmed that the Complainant had not contacted the Commission.

19. When the hearing resumed at 10:19 a.m., the Complainant was not present.

20. All Hearing Notices and Prehearing Orders were sent to the 133 West Rosemar Street, 2<sup>nd</sup> Floor, Philadelphia, Pennsylvania mailing address the Complainant provided on the Formal Complaint.

21. Neither the Call-In Telephonic Hearing Notices nor the October 3, 2019 Prehearing Order were returned as undeliverable.

22. On or about February 26, 2020, the January 29, 2020 Prehearing Order was returned as undeliverable.

23. Attempts to contact the Complainant to obtain another mailing address in order to reschedule the hearing were not successful.

24. The telephone number provided by the Complainant on the Complaint was disconnected.

25. On February 26, 2020, an email seeking a mailing address was sent to the Complainant at the email address provided by the Complainant on the Complaint.

26. The Complainant did not respond to the February 26, 2020 email.

27. The Complainant has not contacted the Commission since the hearing date.

28. The first page of the Formal Complaint form completed and filed by the Complainant states:

It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

*(emphasis in the original)*

29. The Complainant did not request a continuance or provide a statement of good cause for his absence on the scheduled hearing date.

30. The Complainant did not provide the Commission with an updated mailing address.

### DISCUSSION

Administrative agencies such as the Commission are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

Notices and Orders were sent to the Complainant at the address that he provided on the Complaint. The Notice and Order sent to the Complainant for the December 18, 2019 hearing were not returned as undeliverable.

Moreover, the notice for the February 4, 2020 telephonic hearing containing the date, time and call-in number for the hearing that was mailed to the Complainant at the address he stated on the Complaint form was not returned to the Commission. It is therefore deemed that the Complainant had notice of the date and time of the scheduled February 4, 2020 hearing. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974).

The Prehearing Order for the February 4, 2020 hearing was returned as undeliverable after the hearing date. This Order was sent to the Complainant at the mailing address that he provided on the Complaint.

As stated on the first page of the Complaint, a Complainant must keep the Commission apprised of any address changes. Additionally, 52 Pa. Code § 1.53(d) provides that it is a duty of a party to apprise the Commission promptly of any change of address.

Extra efforts to contact the Complainant by both telephone and email to obtain another mailing address were to no avail. The telephone number provided by the Complainant on the Complaint was disconnected and the Complainant did not respond to the email sent to the email address that he provided on the Complaint.

As the Commission noted in *Strydio v. PPL Electric Utilities Corporation*, 2018 Pa. PUC LEXIS 258, \*8, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018) "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing," citing, *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993). The Complainant was notified of the scheduled hearing and did not appear for the hearing. Additionally, the Hearing Notice advised the Complainant that his case could be dismissed if he did not call in and participate in the hearing.

To date, the Complainant has not contacted the Commission or the undersigned regarding the hearing. The Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. The Complainant was advised in the Hearing Notice that he could lose his case if he did not participate in the hearing or present facts on the issues presented. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered

December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F 2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994).

3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016); *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not apprise the Commission of a change of address. 52 Pa. Code § 1.53(d).

6. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, he failed to meet his burden of proving that he is eligible for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

